

1 U.S. SECURITIES AND EXCHANGE COMMISSION  
2 STEPHEN L. COHEN (cohens@sec.gov)  
3 100 F Street, N.E.  
4 Washington, D.C. 20549-4030  
Telephone: (202) 551-4472  
Facsimile: (202) 772-9245  
Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

## 12 SECURITIES AND EXCHANGE COMMISSION.

**Plaintiff,**

V.

KENT H. ROBERTS.

**Defendant.**

Case No. C 07-04580 MHP

**EX PARTE MOTION FOR  
ADMINISTRATIVE RELIEF (TO CONTINUE  
HEARING SCHEDULED FOR FEBRUARY 25,  
2008)**

The Securities and Exchange Commission, through undersigned counsel, pursuant to Civil  
19  
Local Rule 7-11, respectfully moves the Court for an Order postponing the hearing scheduled for  
20  
Monday, February 25, 2008, at 2:00 p.m., on Defendant's Motion to Compel Production of  
21  
Documents from Third Party Howrey LLP. At a discovery hearing held on January 30, 2008, the  
22  
Court ordered the parties to file briefs on the Defendant's motion on or before February 15, 2008.  
23  
The SEC did not file a brief on this issue, as the motion seeks to compel documents of a third  
24  
party and seeks nothing directly from the SEC. Defendant's brief, however, makes certain  
25  
characterizations (not wholly accurate) regarding the SEC's actions, which seem to form the  
26  
predicate, at least in part, of Defendant's motion. As a result, the SEC has an interest in being  
27  
28

1 present for this hearing.

2 Undersigned counsel (lead counsel and the only trial counsel authorized to represent the  
 3 Commission in this matter) will be in Puerto Rico on Monday, February 25, on a pre-paid family  
 4 vacation scheduled last year, planned specifically around the aggressive discovery schedule  
 5 proposed by Defendant (Defendant has already taken approximately 12 depositions in six states  
 6 since December, although they have been extremely professional in scheduling-related issues to  
 7 date). Upon receiving and reviewing the briefs filed a few days ago, undersigned counsel  
 8 contacted the Court's staff in an effort to appear telephonically. The SEC was informed today by  
 9 the Court's staff that such a telephonic appearance during an in-person hearing would be  
 10 impracticable because of the courtroom technology. The SEC immediately contacted the other  
 11 counsel involved in this matter and, unable to obtain a stipulation, files the instant motion seeking  
 12 administrative relief.

15 No party is prejudiced by this request as discovery does not close in this matter until July  
 16 10, 2008. Accordingly, a brief continuance would not interfere with the discovery schedule, and  
 17 Defendant has proceeded to take depositions expeditiously even without first seeking to resolve  
 18 this issue. Nonetheless, Bill Freeman, counsel to Defendant, informs me that he opposes the  
 19 SEC's request. Robert Gooding, counsel to Howrey, who will also be attending the hearing from  
 20 out of town, does not oppose the SEC's request. For the reasons stated herein, the SEC  
 21 respectfully requests a brief, 1-2 week continuance of the hearing<sup>1</sup> so that undersigned counsel  
 22 can attend.

24  
 25  
 26 <sup>1</sup> Since undersigned counsel has to be in San Francisco for a deposition scheduled by the  
 27 Defendant on Tuesday, March 11, the SEC requests that the hearing be postponed until Monday,  
 28 March 10. If the Court views that as too long to wait, however, undersigned counsel can attend  
 on March 3. If the instant motion is not resolved before the hearing, undersigned counsel will be  
 available by telephone if that would be helpful to the Court.

1 DATED: February 21, 2008  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SECURITIES AND EXCHANGE  
COMMISSION

/s/  
Stephen L. Cohen

Attorney for Plaintiff Securities and Exchange  
Commission

## **PROOF OF SERVICE**

I am over the age of 18 years and not a party to this action. I am a citizen of the United States and a resident of the District of Columbia. My business address is: U.S. SECURITIES AND EXCHANGE COMMISSION, 100 F Street, NE, Washington, D.C. 20549-4030. On the date set forth below, I served the attached Ex Parte Motion for Adminstrative Relief in the manner described below:

- U.S. MAIL:** I caused the above document to be placed in a sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.
- HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee.
- FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier.
- ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated below.

on the following counsel of record:

William S. Freeman  
Cooley Godward Kronish LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
[freemanws@cooley.com](mailto:freemanws@cooley.com)

Robert E. Gooding, Jr.  
Howrey LLP  
4 Park Plaza, Suite 1700  
Irvine, CA 92614  
[goodingr@howrey.com](mailto:goodingr@howrey.com)

Executed on February 21, 2008, at Washington, D.C.

STEPHEN L. COHEN